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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,303

09/22/2005

Nicholas De Grunwald

25821P041

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09/19/2008

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EXAMINER

GRAHAM, GARY K

ART UNIT

PAPER NUMBER

3723

MAIL DATE

DELIVERY MODE

09/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/523,303	Applicant(s) DE GRUNWALD, NICHOLAS	
	Examiner Gary K. Graham	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 8 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xiaolie (CN patent 2498626) in view of Russell (US patent 4,779,291).

The patent to Xiaolie discloses the invention substantially as is claimed, including a protective shielding device (fig.1) including a wiper blade apparatus. The shielding device has a substantially flat visor (1), a blade (2) for wiping the visor, a motor (4) for moving the blade and an attachment means or strap (5) for mounting the device to a user.

The patent to Xiaolie discloses all of the above recited subject matter with the exception of the device including a flexible seal around the edges of the visor for sealing the visor with headgear and the strap being elastic and including a cleat.

The patent to Russell discloses a protective shielding device (fig.1) to protect a user, the device including a visor (12) with attachment means or elastic strap (32) to mount the device to a user. The strap includes a cleat structure (fig.7) intermediate its ends to enable adjustment of the strap. The device also includes a flexible seal (24,26) around substantially all the edges of the visor.

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It would have been obvious to one of skill in the art to provide the shielding device of Xiaolie with a seal around substantially all the edges of the visor, as clearly suggested by Russell, to prevent unwanted debris, moisture, etc from getting behind the visor during use. Use of sealing means on user mounted visors is well known. It also would have been obvious to one of skill in the art to make the strap of Xiaolie as elastic and provide with a cleat therein, as clearly suggested by Russell, to enable easy use of the strap and to enable strap adjustment.

With respect to claim 1, note that the device of Xiaolie can be used in any manner so desired to the user. It could be mounted to the face of a user or can be mounted to protective headgear, if so desired. Nothing would prevent such mounting. Note that the headgear is not part of claim 1 as the claim sets forth an apparatus for protective headgear. The claim also sets forth that the seal is for sealing the apparatus. Such relates to the use of the apparatus and use of the seal.

With respect to claim 5, as Russell does not teach the seal completely around the visor, the space left where the strap attaches to the visor will act as ventilation means.

With respect to claim 13, it appears that the strap of Xiaolie is replaceable, as nothing would prevent such.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Xiaolie (CN patent 2498626) in view of Russell (US patent 4,779,291) as applied to claim 1 above, and further in view of Cote (US patent 2,265,266).

The patents to Xiaolie and Russell disclose all of the above recited subject matter with the exception of the apparatus including two wiper blades.

The patent to Cote discloses that wiper apparatus may include more than one blade, for example two blades (figs.1,7) for movement over a surface to be cleaned.

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It would have been obvious to one of skill in the art to provide the modified apparatus of Xiaolie with two wiper blades, as clearly suggested by Cote, to enhance the cleaning function of the apparatus. Use of multiple wiper blade to clean surfaces is well known.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xiaolie (CN patent 2498626) in view of Russell (US patent 4,779,291) as applied to claims 1 and 8 above, and further in view of Montesi (US patent 4,276,657).

The patents to Xiaolie and Russell disclose all of the above recited subject matter with the exception of the attachment means further including means for releasably securing the strap to the headgear.

The patent to Montesi discloses releasable securing means (30) for securing a strap (22) of visor (20) to headgear (12). The securing means is fixed to the headgear. Montesi clearly discloses providing headgear such as hard hats with attached visors (20).

It would have been obvious to one of skill in the art to use the apparatus of Xiaolie with headgear, as clearly suggested by Montesi, such that a users head as well as eyes are protected. It also would have been obvious to employ a releasable securing means such as that disclosed by Montesi to secure the strap to the headgear to prevent inadvertent loss of the visor.

Response to Arguments

Applicant's arguments filed 12 June 2008 have been fully considered but they are not persuasive. Applicant argues that the claims are directed to sealing the apparatus with a visor of headgear and that the seal of Russell is to provide a seal around/between the eyes of the user and the eye shield and not to seal the apparatus with protective headgear. While such is true, such does not distinguish the claims from the Xiaolie/Russell combination. It is noted that claim 1 sets forth the apparatus "for" protective headgear and that the seal is "for" sealing the apparatus with headgear. Thus, the headgear with visor is not being claimed. The intended use of the apparatus and seal therefor do not distinguish from that which is taught by Xiaolie/Russell. The device of Xiaolie provided with a seal, as taught by Russell, could be used with the visor of headgear, nothing would prohibit such use. There is no requirement that the seal actually engage the visor of headgear, only that such could. As such, it appears a seal provided on the Xiaolie device could be used with headgear in the manner claimed.

Applicant further argues that there is no reason to combine the teachings of the references. Such is not persuasive. As set forth above, Russell clearly discloses providing sealing for substantially flat visors to provide protection to a user. Such could readily be employed in Xiaolie for exactly the same reason. If the device of Xiaolie is desired to be used on the face of a user, sealing would appear obvious, as set forth by Russell. It is unclear why sealing of the visor of Xiaolie would not be desirable as suggested by Russell. Why would one not seal the device of Xiaolie to protect a user as suggested by Russell?

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3723

GKG
15 September 2008